

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Access Charge Reform for Incumbent	)	CC Docket No. 98-77
Local Exchange Carriers Subject to	)	
Rate-of-Return Regulation	)	

**REPLY COMMENTS**

The National Exchange Carrier Association, Inc. (NECA) herein files its reply comments regarding the Commission's *Notice of Proposed Rulemaking* in the above captioned matter.<sup>1</sup>

**I. The Record Shows That The Commission Should Not Move Forward with Access Reform for Rate of Return Companies Until The Effects of Universal Service Rule Revisions and Separations Reform are Evaluated.**

Nearly a dozen parties, including MCI and the majority of national local exchange carrier (LEC) associations, recommend deferring implementation of access reform for rate of return (ROR) companies until after the revised universal service recovery mechanism for rural LECs is implemented.<sup>2</sup> Other parties agree with NECA that the effects of separations reform should also be factored into a ROR access reform recommendation.<sup>3</sup>

As NECA stated in its comments, NECA's pool participants are very concerned about the

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<sup>1</sup> Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, *Notice of Proposed Rulemaking*, FCC 98-101, CC Docket No. 98-77 (rel. June 4, 1998) (NPRM); *Order*, DA 98-1418 (rel. July 15, 1998) (granting extension of time for comments and replies).

<sup>2</sup> See MCI at 7-9; NECA at 3-4; NRTA & NTCA at 4-7; USTA at 8-11; ICORE at 6-7; Telephone Association of New England (TANE) at 1-5; Minnesota Independent Coalition (MIC) at 2; Fred Williamson & Associates (FWA) at 6; TDS at 3-8; John Staurulakis, Inc. (JSI) at 2. See also Western Alliance at 2-3 (stating that Commission should study problems arising from price cap LEC access charge reform before imposing similar rules on ROR LECs).

<sup>3</sup> NRTA & NTCA at 10-11; TANE at 3-4; MIC at 2; and FWA at 6.

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potential effects of imposing access charge rule revisions on ROR companies at this time.

Substantial uncertainty exists with respect to the effects of universal service rule revisions on rural companies and the impacts of separations reform. Increased subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) resulting from ROR access reform could have adverse effects on service in rural areas, unless coordinated with these other proceedings.

As NRTA & NTCA point out, many ROR LECs derive more than 60 percent of their revenues from interstate and intrastate access services.<sup>4</sup> For the ROR carriers of the Telephone Association of New England (TANE), access revenues account for more than 70 percent of the total.<sup>5</sup> If large amounts of revenue requirement are simply shifted to end users, directly through SLCs and indirectly through PICCs, universal service may suffer. NECA agrees with MCI that the Commission “must still determine the amount of universal service support required to ensure the availability of basic, affordable telephone service throughout America . . . .”<sup>6</sup>

The record clearly supports deferring implementation of access reform for rate of return companies until the combined effects of universal service rule revisions and separations reform are known. Waiting until resolution of these proceedings will also allow the Commission and the industry to gather data on the effects of access reform on price cap companies, and then analyze them in the context of access reform for ROR LECs.<sup>7</sup>

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<sup>4</sup> NRTA & NTCA at 2.

<sup>5</sup> TANE at 2.

<sup>6</sup> MCI at 7.

<sup>7</sup> ICORE and Lexcom Telephone Company suggest that the Commission issue a Notice of Inquiry seeking input on various access reform issues for ROR companies, rather than

## **II. Significant Differences Between ROR and Price Cap LECs Warrant Consideration of Different Approaches for ROR Access Reform**

Contrary to AT&T's comments, the record clearly shows that it would be unwise to impose price cap LEC access charge rules on ROR LECs.<sup>8</sup> As NECA stated in its comments, and as supported by the record, differences in cost characteristics between price cap and ROR LECs warrant different treatment of carrier access charge structures.<sup>9</sup>

For example, application of the FCC-prescribed price cap access reform rules would cause ROR LEC SLCs and PICCs to reach the price cap ceilings immediately, causing rate disparity since the price cap companies' average SLC and PICC are well below the ceilings. As shown in Attachment A, the FCC-prescribed ceilings in the 1999/2000 test period are \$9.41 and \$4.33 for multi-line business SLCs and PICCs respectively, while the corresponding price cap company averages are \$7.14 and \$3.64. Assuming that interexchange carriers pass the PICC on to the end user customer, as has been their practice, this would result in end user charges 27

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proceeding with this rulemaking. See ICORE at 7-8; Lexcom Telephone at 30.

<sup>8</sup> See AT&T at 3-4. AT&T also asserts that the Commission should revise the Part 36 rules regarding DEM weighting. According to AT&T, the current Part 36 rules allow for a local switching revenue requirement that is based on an apportionment factor that reflects DEM weighting, while continuing to receive Local Switching Support (LSS) amounts pursuant to the Commission's Part 54 Universal Service Rules (47 C.F.R. Part 54). AT&T fails to mention, however, that pursuant to section 69.106(b) of the Commission's rules (47 C.F.R. § 69.106(b)), local exchange carriers are required to exclude LSS amounts from revenue requirements used to calculate local switching rates. Thus, no double recovery of LSS amounts may occur under the current rules. In addition, AT&T's proposal to consider changes to the authorized rate of return are outside the scope of this proceeding. Even if it weren't, it would be premature for the Commission to even entertain the notion of a rate re-prescription proceeding while the entire regulatory paradigm under which ROR carriers operate lays in flux. Until it is better understood how ROR LECs will be able to operate in a competitive, post-1996 Act universe, it is impossible to evaluate the long term risk of these companies.

<sup>9</sup> See, e.g., NECA at 1-4; USTA 7-22; JSI at 3-8; Lexcom Telephone at 6-9; and ICORE at 2. See also, NRTA & NTCA at 2-3; Western Alliance at 1-3.

percent higher for ROR companies as compared to price cap carriers. This disparity in rates increases in subsequent test periods due to adjustments for inflation provided for in the Commission's rules.

In its comments, JSI assumes that price cap carriers will recover the costs underlying their non-primary residence line and multiline business PICC rate through primary and single line PICCs as early as July 1999, coincident with the elimination of their CCL charges.<sup>10</sup> If this assumption is borne out, end user charges for multiline customers could be as much as 92 percent higher for ROR companies compared to price cap carriers. NECA agrees with JSI that the proposed rules would create substantial differences between consumer prices applicable to price-cap and ROR LECs, which would run counter to the universal service policy of the Telecommunications Act of 1996 (1996 Act) and its mandate that rates in rural areas be "reasonably comparable" to rates charged to urban customers.<sup>11</sup>

Thus, MCI's recommendation that ROR non-primary and multiline business SLC caps be set at the FCC-prescribed SLC caps for price cap carriers,<sup>12</sup> would impose substantial additional costs on rural telephone users. MCI tries to gloss over this disparity, arguing that a \$9.00 multiline business SLC would be no less affordable and would remain "reasonably comparable" to urban SLCs. However, a \$9.00 multiline business SLC would be 50 percent "less affordable" than the current level and would clearly have a negative impact on rural businesses, which also generally have greater toll charges than their urban counterparts due to smaller local calling

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<sup>10</sup> JSI at 9.

<sup>11</sup> See JSI at 8-9.

<sup>12</sup> MCI at 11-14.

regions. MCI also seems to ignore the continuing increase in this rate disparity that a Commission-prescribed inflation index would produce, which will further erode rate comparability.<sup>13</sup>

To avoid SLC and PICC rate disparities, the Commission could cap ROR LECs' SLCs and PICCs at the price cap averages for those elements, as suggested by a number of parties. However, the Commission's prescribed transfer of TIC and line port costs to CL present yet another significant rate disparity issue. Even with the ROR LEC SLCs and PICCs at FCC-prescribed ceilings, transfer of TIC revenue requirements (\$293 million in 1999/2000) and line-side port costs (approximately \$220 million in 1999/2000)<sup>14</sup> to the CL category will necessarily increase NECA CCL charges, even as price cap companies' CCL rates approach zero. In the 1999/2000 test period, for example, NECA's CCL rate would increase to \$0.0211 under such circumstances from a current level of \$0.0110.<sup>15</sup> As late as 2001/02, the CCL rate would still be more than \$0.01 under such a scenario, roughly the same as the rate is today.<sup>16</sup> As JSI points out

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<sup>13</sup> MCI also argues that anything less than a \$9.00 SLC would create a cross-subsidy from high-volume to low-volume long distance customers. However, as provided for in the 1996 Act and its legislative history, and as already recognized by the Commission, such a result is consistent with the Act and Commission universal service policy to maintain comparable rates. *See Access Charge Reform, First Report and Order*, 12 FCC Rcd 15982 at ¶ 9 (1997) (citing to the 1996 Act and its legislative history). In addition, MCI's argument that "cherry picking" will not occur is meritless on its face. An unnecessarily high SLC will clearly attract unregulated competitors to enter the ILEC's regulated market and cherry pick the low-cost, high-volume business customers. *See also* Western Alliance at 11-12; MIC at 9-10 (describing other negative consequences for rural economies).

<sup>14</sup> JSI assumes higher line port costs than NECA, which would mean even a greater amount would be transferred to the CCL under the Commission's proposal.

<sup>15</sup> *See* Attachment B.

<sup>16</sup> *See id.*

in its comments, the CCL rate could be in excess of \$0.02 if different assumptions are made regarding the value of such variables as line port transfers.<sup>17</sup> This would further exacerbate rate disparities between ROR and price cap LECs, with potential adverse impacts on universal service.<sup>18</sup> As USTA and JSI also point out, and as demonstrated above, these reforms will not achieve the Commission's objective of replacing the traffic sensitive CCL rate with NTS cost recovery mechanisms.<sup>19</sup>

NECA agrees with other parties, as it stated in its comments, that the Commission should consider adopting rules that allow for more flexibility in the way ROR carriers charge for access services. In some cases, ROR carriers might find it possible to recover higher portions of non-traffic sensitive costs via flat-rated charges, without significantly harming universal service in their areas.<sup>20</sup> Rule revisions that would permit these carriers to proceed with implementing access reform could accomplish the Commission's goals in this proceeding without harming

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<sup>17</sup> JSI, Attachment A, Table 1. JSI uses the same underlying data in its analyses as NECA does. While different assumptions are made regarding such variables as growth rates and line port transfers, use of these assumptions is not unreasonable and could result in even more dramatic rate disparity effects.

<sup>18</sup> The Commission itself has pointed out the importance of keeping the NECA pool's CCL stable, and that it wasn't the Commission's intent for the pool CCL to change as a result of universal service or access charge rule changes. *See Access Charge Reform, Second Order on Reconsideration*, 12 FCC Rcd 16606, 16635 (1997); Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 9165-66, 9169-70 (1997). Further, should the Commission nevertheless determine that line-side port costs be transferred to the CL category prior to completion of universal service proceedings and separations reform, it should ensure that this action does not cause inadvertent reductions in local switching support levels, which currently are calculated based on local switching revenue requirements. *See* 47 C.F.R. § 54.301.

<sup>19</sup> *See* USTA at 16-17, JSI at 4.

<sup>20</sup> NECA also supports the concept of term and volume discounts to larger customers as advocated by a number of parties. *See* AllTel at 7, TDS at 23, Lexcom Telephone at 29, and ATU at 4.

carriers and customers located in more rural and remote areas. As OPASTCO notes, however, as prices for access services become more disaggregated, the Commission should remain mindful of the geographic rate averaging requirements set forth in section 254(g) of the Act.<sup>21</sup>

The record also supports NECA's point that the Commission should not require ROR LECs to impose different SLCs and PICCs on customers' primary and secondary lines.<sup>22</sup> Instead, as NECA, USTA and JSI suggest, *all* residential SLCs should remain at the current \$3.50 per line.<sup>23</sup> As NECA and numerous other parties indicated in the *Price Cap Access Charge Reform* proceedings and in their comments in this proceeding, any regulatory distinction between lines would give rise to "insurmountable practical, administrative and customer privacy problems,"<sup>24</sup> and could curb demand for advanced telecommunications services.<sup>25</sup> If demand for

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<sup>21</sup> See OPASTCO at 6-7.

<sup>22</sup> See e.g., OPASTCO at 14-15; NECA at 5-6; NRTA & NTCA at 26-27; USTA at 12-14; and Anchorage Telephone Utility at 6-7. See also AllTel at 9 (opposing any changes to the SLC and imposition of a PICC).

<sup>23</sup> See NECA at ; USTA at ; JSI at 13-16. Other comments are consistent with this recommendation.

<sup>24</sup> TDS at 14.

<sup>25</sup> See *NECA Reply*, Access Charge Reform Notice of Proposed Rulemaking, FCC 96-488, CC Docket No. 96-262 (Feb. 14, 1997 at 7-8, citing other carriers). ROR LECs would have to attempt to determine the nature of their customers' various telecommunications connections and living arrangements, a difficult if not impossible task in an era of much greater mobility, multiple-single-adult households and other alternative living arrangements. The Commission has recognized difficulties encountered by price cap LECs in differentiating primary from secondary lines. See *Defining Primary Lines*, Notice of Proposed Rulemaking, FCC 97-316, CC Docket No. 97-181 (rel. Sept. 5, 1997). In this *NPRM*, the Commission tentatively concludes that identifying primary residential lines will require: (1) identification of the primary subscriber, residence, or household (depending on the definition adopted); (2) identification of the primary residence of the subscriber or household; and (3) identification of the primary line, and of the incumbent LEC and interexchange carrier serving that line. *NPRM* at ¶ 8. The Commission has not yet acted on the input received from this *NPRM*, indicating the difficulties involved in this

additional lines for advanced services were to diminish due to higher charges, not only would this hinder the 1996 Act's goal of universal access to advanced services, it would also defeat the Commission's goal in this proceeding to offset a greater portion of carriers' CL revenue requirements through flat-rated charges. Moreover, leaving the residential SLC at \$3.50, as JSI points out, would not significantly impact switched access charges.<sup>26</sup>

In addition, the record overwhelmingly opposes the Commission's proposal to reallocate additional GSF costs to the B&C category.<sup>27</sup> Unlike larger price cap companies, ROR LECs generally do not perform their own billing functions but instead rely on the services of outside vendors. Because outside vendors are used, there are no "hidden" B&C-related costs within the GSF category. Allocating additional GSF costs to the B&C category would thus result in under-recovery of these costs by small ROR LECs.

### **III. The Commission Must Provide Sufficient Time to Implement Any Future Rate Structure Changes.**

NECA has stated in its comments, and the record supports, that whatever path the Commission eventually takes, it should allow adequate time for interested parties to study

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distinction.

<sup>26</sup> NECA estimates that keeping the residential SLC for non-primary lines equal to \$3.50, while also keeping the non-primary residential PICC equal to the primary PICC, would result in an increase of switched access charges of approximately \$0.002 per minute, a result similar to JSI's estimate (JSI at 14-15).

<sup>27</sup> See e.g., NECA at 6-7; NRTA & NTCA at 30-31; GVNW at 1; ITCs at 6; Western Alliance at 19-20; Table Top Telephone at 1-2; Midvale Telephone at 1-2; Central Utah Telco at 1-2; Bear Lake Comm. Inc. at 1-2; Southern Montana Telco at 1-2; North-State Telco at 1-2; Hardy at 1-2; Direct Communications at 1-2; Cass Telco at 1-2; Clear Creek Mutual Telco at 1-2; and Dell Telephone at 1-2.



proposed approaches.<sup>28</sup> This proceeding involves complex regulatory issues which, as discussed above, are necessarily tied to other proceedings with potentially significant combined impacts on the over 1,000 small telephone companies nationwide that have traditionally provided universal service. Taking time to consider new approaches and their impacts, rather than simply applying potentially ill-fitting price cap rules, would allow the Commission to better meet the pro-competitive, de-regulatory principles of the 1996 Act without unnecessarily burdening small, incumbent LECs and disturbing the Act's universal service principles.

In moving more slowly, the Commission may find that circumstances warrant a reexamination of the continued need for complex regulation of ROR carriers.<sup>29</sup> The current rules' comprehensive regime of prescribed access rate structures and methodologies may well have outlived any useful purpose, and may warrant more de-regulatory oriented reform.

Even after current separations reform and universal service issues are resolved, the Commission must provide sufficient time to implement the new rate structures contemplated in this proceeding. Many of the proposals advanced in the NPRM will require substantial implementation effort by ROR carriers which they will need time to effect.<sup>30</sup> NECA also anticipates that, in order to implement the rate structure changes proposed in this proceeding, it will likely need time to collect data from CL pool members who file their own TS tariffs;

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<sup>28</sup> See e.g., NECA at 7-8; FWA at 4; ICORE at 6.

<sup>29</sup> See *supra*, note 7.

<sup>30</sup> For example, in order to transfer line-side port costs to the CL category, ROR LECs would be required to conduct cost studies to determine the geographically-averaged portion of local switching costs that is attributable to line-side ports. NPRM at ¶ 54. These cost studies will take time, and a surrogate may be necessary if the transfer is mandated prior to completion of the cost studies.

develop new procedures to track and forecast rates; and collect new types of demand and cost data.

In addition, and more specifically, any increases in SLCs or imposition of PICCs should include a transition period. A number of parties have specifically suggested that the Commission use an average of price cap carrier SLC and PICC charges to “cap” ROR LEC SLC and PICC charges. If, after considering the need to coordinate access reform for ROR LECs with universal service and separations reform, the Commission decides to adopt this approach, it should provide for a transition to the price cap average over a three- to five-year period to avoid rate shock.<sup>31</sup> A transition might help maintain parity among carrier end user rates and would reduce, but not eliminate, the negative impact on universal service goals and rural economies that immediate implementation of the Commission’s price cap rules could cause.

#### **IV. Conclusion**

The record clearly supports deferring implementation of access reform for rate of return companies until the combined effects of the changes brought about in the universal service and separations reform proceedings are known. Deferral of specific rule changes will allow the Commission and industry to gather data on the effects of these changes on companies and their customers, and will help avoid adverse impact on universal service.

As the Commission moves forward with these fundamental proceedings, it should consider different approaches for ROR LECs than those used for price cap LECs due to the significant differences between the two types of carriers. The Commission should also allow ROR LECs adequate time to prepare for implementing access reform changes, including time to

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<sup>31</sup> The price cap average will increase over time, so it is especially important to provide a measured transition period to avoid overly large, instant rate increases.

prepare necessary cost studies and to develop alternative revenue recovery methods where required.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER  
ASSOCIATION, Inc.

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September 17, 1998

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Respectfully submitted,

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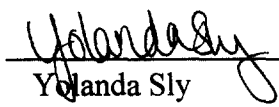
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I hereby certify that a copy of the foregoing Comments was served this 17th day of September, 1998, by hand delivery or by mailing copies United States Mail, first class postage paid, to the persons listed below.

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